



One Hundred First Legislature - First Session - 2009
Introducer's Statement of Intent
LB 34

Chairperson: Brad Ashford
Committee: Judiciary
Date of Hearing: February 18, 2009

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

There are between 35,000 and 55,000 undocumented immigrants living in Nebraska. Most of them came here and stayed here because of the availability of jobs. Undocumented workers are not eligible for employment in Nebraska under federal immigration law. Therefore, a significant number of Nebraska immigrant workers are employed illegally.

The Nebraska Fair and Legal Employment Act is based on the Legal Arizona Workers Act. It creates a cause of action against employers that knowingly hire undocumented workers. The penalty is the discretionary suspension of an employer's business license for the first violation and the mandatory revocation of an employer's business for the second violation within the 3-year probationary period. Proof of the use of E-verify creates a rebuttable presumption against a violation. There is also a prohibition on the state or any political subdivision awarding contracts to contractors or subcontractors who do not use E-Verify.

Summary:

Sec. 1. – Law cited as the Nebraska Fair and Legal Employment Act.

Sec. 2. – Definitions of agency, employee, employer employment verification system, knowingly employ an undocumented worker, license and undocumented worker.

Sec. 3. – Prohibits employers from knowingly employing undocumented workers.

Sec. 4. – Mandates that all employers use E-Verify to verify the employment eligibility of all new hires after December 31, 2010.

Sec. 5. – Requires the Attorney General to prescribe a complaint form for any person to use to file a complaint against an employer who allegedly knowingly employs an undocumented worker. The complaint does not have to include the complainant's social security number nor does it have to be notarized. The complaint may be anonymous and does not have to be filed on the prescribed form. The complaint may be filed with either the Attorney General or the county attorney in the county where the alleged violation occurs. The Attorney General or the county attorney must investigate the complaint unless it is based solely on race, color, or nation origin,

in which case it shall not be investigated. Local law enforcement may assist in the investigation. During the investigation, the employment eligibility of the alleged undocumented worker must be verified with the federal government.

Sec. 6. – If the complaint is determined not to be false or frivolous, the Attorney General or the county attorney must notify ICE and local law enforcement about the undocumented worker. Actions against employers for knowingly employing undocumented workers must be brought by the county attorney in the county where the undocumented worker is or was employed. Violations that occurred before January 1, 2010 are not actionable.

Sec. 7. – The court shall expedite actions filed under this act. The court shall only consider the federal government’s determination of the employee’s status. The federal government’s determination creates a rebuttable presumption of lawful status of the employee. Proof of using E-Verify on an employee creates a rebuttable presumption against a violation. An employer that establishes it complied in good faith with the federal requirements for examining identity and employment eligibility documents of potential employees shall have an affirmative defense against a violation.

Sec. 8. – Upon a first time finding or a finding outside of the probationary period – a Type A violation - that an employer knowingly employed an undocumented worker, the court:

- Shall order the employer to terminate employment of all undocumented workers.
- Shall order a 3-year probationary period for the employer.
- Shall order the employer to file a signed sworn affidavit with the county attorney within 3 business days of the order being issued.
 - The affidavit must state that the employer has terminated employment of all undocumented workers and will not knowingly employ undocumented workers.
 - If affidavit is not filed within 3 days, the court shall order the appropriate agency to suspend the employer’s license until the affidavit is filed.
- May order the appropriate agencies to suspend all licenses held by the employer for a period not exceeding 10 business days.

Upon the finding of a violation within the probationary period – a Type B violation – that an employer knowingly employed an undocumented worker, the court shall order the appropriate agencies to permanently revoke all licenses held by the employer.

Sec. 9. – The Type A violation is one that did not occur during the probationary period. The Type B violation is one that occurred during a probationary period.

Sec. 10. – The Attorney General shall maintain copies of court orders issued pursuant to this act and make them available on the AG website. The AG shall also maintain a database of employers that have Type A violations.

Sec. 11. – A Person who files a false or frivolous complaint against an employer is guilty of a Class III misdemeanor. If previously convicted of filing a false or frivolous complaint, a person is guilty of a Class I misdemeanor.

Sec. 12. – After January 1, 2010, contractors and subcontractors of the state or any political subdivision must use E-Verify to verify the employment eligibility of all employees performing services under the contract and provide the E-Verify system documents in order to be awarded a contract.

Principal Introducer:

Senator Brad Ashford